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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,227	09/08/2003	Soichiro Ogawa	50340-156	1064
7590 McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			EXAMINER ECHELMEYER, ALIX ELIZABETH	
			ART UNIT 1729	PAPER NUMBER
			MAIL DATE 02/01/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,227

Applicant(s)

OGAWA, SOICHIRO

Examiner

Alix Elizabeth Echelmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 15, 2010 has been entered.

2. Claims 15, 16, 18, and 25 are amended. Claims 26 and 27 have been added. Claims 15-27 are rejected for the reasons given below.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugita et al. (US 6,455,179) in view of Tanaka et al. (US 6,803,142) and Iwamura (US 6,400,122).

Regarding claims 15 and 18, Sugita et al. teach a fuel cell system for use in a vehicle (abstract, column 1 lines 5-6). The fuel cell system has two fuel cell

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stacks having stacks of fuel cells with end plates at both ends (16, 24) (Figures 1 and 2). Stacking bolts (154) maintain the cells in a stack (Figure 2).

Sugita et al. teach brackets to hold the fuel cell system to the vehicle (168 of Figure 2). There are bolts within the brackets that are perpendicular to the fixed direction of the fuel cell stack (170a in Figure 2).

As for claims 17 and 25, Sugita et al. further teach rubber mounts for the brackets that attach the fuel cell to the vehicle (column 6 lines 65-67).

With further regard to claims 18 and 26, Sugita et al. teach a fluid supply/discharge block (28) (column 5 line 53 - column 6 line 26).

Regarding claim 19, Sugita et al. teach end plates (24), one at one end of the stack and a second attaching the piping mechanism to the stack. Between the attachment plate and the end plate (24) is gap containing springs, which serve to tighten the stack (column 6 lines 27-39). One of ordinary skill in the art at the time the invention was made would recognize that springs, by their nature, would allow for expansion of the stack.

As for claims 20 and 21, Sugita et al. fail to teach the depression, projection, and seal within the expansion/contraction mechanism, which for the purposes of examination will be interpreted to be the fluid supply block, second plate, first plate and springs, since the mechanism would not function as claimed without these components. One of ordinary skill in the art would recognize that the expansion/contraction mechanism of Sugita et al. would inherently have a projection connecting the fluid supply block with the fuel cell, since without such a connection fuel could not be provided to or removed from the fuel cell stack.

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Further, a seal would be necessary or at the very least obvious in order to prevent leakage. As long as there is attachment between the fluid supply/discharge block and the stack, the structure of Sugita et al. would function as the structure of the instant invention does. A depression would be inherent in order to provide a place for the projection to connect the stack and the fluid supply/discharge block.

With regard to claim 22, Sugita et al. teach that the end plates are conductive (abstract).

As for claim 23, Sugita et al. teach two stacks arranged in parallel and electrically connected, with a fluid supply/discharge block attached to both stacks, but fail to teach whether the stacks are electrically connected in parallel or series (Figure 1, column 9 line 49 - column 10 line 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made attach the stacks in series if it was desired to maximize voltage produced by the system.

Regarding claims 27, Sugita et al. teach a spring (146 a,b,c) interposed between the front end plate and the fluid supply/discharge block (Figure 2).

Sugita et al. fail to teach a case and that the bolts holding the fuel cell stack to the vehicle penetrate an end plate and the case.

Tanaka et al. teach a fuel cell having a housing case (10) that provides mounts (123, 130) for fixing the end plates of the fuel cell and case using bolts (104) (abstract). The bolts are electrically insulated (125) (column 3 lines 22-31).

Tanaka et al. further teach that the mounts give the housing structure that allows it to withstand the load concentration on the mount (column 4 lines 1-4).

It would be desirable to use a case such as the housing case of Tanaka et al. in the fuel cell of Sugita et al. since the case would provide protection to the fuel cell from the outside environment. Further, it would be desirable to use the mounts of Tanaka et al. with the mounts of Sugita et al. to attach the case to the end plates of the fuel cell and attach the encased fuel cell to the vehicle, since the configuration of the mounts of Tanaka et al. allow the case to withstand the load concentration on the mount and the mounts of Sugita et al. attach the fuel cell system to the vehicle.

With further regard to claim 18, it would be desirable for the bolts (166 a, b) of Sugita et al. to penetrate the supply block instead of a bracket since it would provide more support for the fuel cell system by changing the load concentration, as Tanaka et al. teach the importance of load concentration. By supporting the fuel cell of Sugita et al. at the supply block, the supply block would have more support than with the use of the brackets, which would be desirable to protect the piping mechanisms that could be carrying volatile reactants such as pure hydrogen.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a case for the fuel cell of Sugita et al. such as taught by Tanaka et al. since the case would provide protection to the fuel cell from the outside environment. It would also have been obvious to one having ordinary skill in the art at the time the invention was made to use the

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mounts of Tanaka et al. with the mounts of Sugita et al. to attach the case to the end plates of the fuel cell and attach the encased fuel cell to the vehicle, since the configuration of the mounts of Tanaka et al. allow the case to withstand the load concentration on the mount and the mounts of Sugita et al. attach the fuel cell system to the vehicle.

Sugita et al. in view of Tanaka et al. fail to teach that both ends of the bolt are located exterior to the case.

Iwamura teaches a battery holding device comprising a stack of batteries (1) contained within a housing members (9, 28) (Figure 6).

Iwamura further teaches a through bolt (27) passing through the casing (9), which serves as an endplate because it is located at the end of the row of batteries and holds them in a row. Iwamura teaches that the bolt goes from the first side to the second side of the end plate, or casing (column 4 lines 58-65).

It is further taught that the through bolt prevents loosening of the module (column 7 lines 34-43).

Iwamura and Tanaka et al. are analogous art because both are concerned with using bolts to fix a housing member to an endplate.

It would have been obvious to extend the bolts (166 a, b) of Tanaka from the first side to the second side of the end plate since, as is taught by Iwamura, the through bolt prevents the loosening of the module.

With further regard to claim 18, it would have been obvious to extend the bolt, discussed above, of Sugita et al. in view of Tanaka et al. through the supply

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block since the skilled artisan would easily recognize that a through bolt would prevent loosening of the module, and the skilled artisan would be capable of rearranging the supply block to extend the bolt through in order to enjoy the added security against loosening provided by a through bolt.

With regard to claims 15 and 18, the bolts of Sugita et al. in view of Tanaka et al. and Iwamura, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The bolt of Sugita et al. in view of Tanaka et al. and Iwamura is structurally the same as the claimed bolt, and therefore is capable of bearing a load exerted in the fixed direction by the fuel cell stack.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sugita et al. in view of Tanaka et al. and Iwamura as applied to claim 19 above, and further in view of Groppe (US 3,856,573).

The teachings of Sugita et al., Tanaka et al. and Iwamura as discussed above are incorporated herein.

Sugita et al. in view of Tanaka et al. and Iwamura fail to teach that the fluid supply/discharge block is made of an electrically nonconductive material.

Groppe teaches plastic channels for supply and discharge of reactants to a fuel cell (column 4 lines 9-13).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic channels as the piping materials of Sugita et al., since plastic materials would be more resistant to chemical wear by harsh chemicals that develop in fuel cell systems.

Response to Arguments

6. Applicant's arguments filed 12-15-10 have been fully considered but they are not persuasive.

Beginning on page 8 and continuing on pages 11-13, of the Remarks, Applicant again argues that Iwamura is not analogous art to Sugita et al. and Tanaka et al. The examiner disagrees.

According to Applicant, the skilled artisan would only be capable of looking to other fuel cell housing structures in order to find ways of improving fuel cell housing structures (see page 12 of Remarks). The examiner finds that this scope of the skilled artisan is unreasonably narrow. The artisan having ordinary skill in the fuel cell art would certainly be capable of looking beyond the fuel cell art to find ideas for improving a fuel cell housing mechanism.

The examiner finds that the housing structure of Iwamura is in the same field of endeavor as the fuel cell housing of the instant invention and Sugita et al. and Tanaka et al. since all are concerned with attaching members of a housing together. Applicant is directed to MPEP 2141.05 (a) IV for more information on analogous art, specifically to the teachings from *In re Deminski*, *Pentec, Inc. v.*

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Graphic Controls Corp., and *Ex parte Goodyear Tire & Rubber Co.* discussed in that section.

On page 10 of the Remarks, Applicant argues that the examiner has used impermissible hindsight reasoning in the rejection of the limitations of claim 18 drawn to the bolt penetrating the supply block. The examiner disagrees; there is clearly a teaching of a blot in the supply block (Sugita et al. Figure 2). The extension of such a block to provide more support would have been obvious, especially in light of the teachings from Iwamura. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alix Elizabeth Echelmeyer whose telephone number is (571)272-1101. The examiner can normally be reached on Mon-Fri 7-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ula Ruddock can be reached on 571-272-1481. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ula C Ruddock/
Supervisory Patent Examiner
Art Unit 1729

Alix Elizabeth Echelmeyer
Examiner
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aee